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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE GAMBLING COMMISSION

GAMBLING COMMISSION
COMM & LEGAL DEPT

In the Matter of the Summary
Suspension and Revocation of
The Class III Certification to
Conduct Gambling Activities of

CARL D. FLORES,

Class III Employee.

Docket No. 2010-GMB-0037
No. CR 2010-00397

INITIAL ORDER OF DISMISSAL
BASED ON DEFAULT

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on July 21, 2010, at the Gambling Commission Office, 4565 7th Avenue SE, Lacey, Washington. Notice of this hearing was previously issued to the parties on June 30, 2010.

Bruce Marvin, Assistant Attorney General, appeared and represented the Washington State Gambling Commission (variously, "Commission" or "SGA"). Special Agent Jenny Kapp was present, but did not testify. The Commission relied solely on exhibits 1 through 11 at the hearing, which were admitted.

Carl D. Flores ("Mr. Flores") the Licensee, failed to appear.

Having considered the entire record, the undersigned Administrative Law Judge enters the following Findings of Fact, Conclusions of Law, and Initial Order Based on Default.

Procedural History:

On April 29, 2010, the Director of the Commission caused a Findings of Fact, Conclusions of Law, Order of Summary Suspension of License, Application for Brief Adjudicative Proceeding ("BAP"), and Application for Adjudicative Proceeding to be issued to Mr. Flores. The Director summarized the allegations against Mr. Flores: "A Class III employee, Carl Flores, admitted taking casino chips, trading the chips for Oyxcontin, and smoking

Oxycontin in the employee restroom during breaks. He was recorded on surveillance video taking the chips and making his admissions.”

The Gambling Commission served the cover letter, Findings of Fact, Conclusions of Law, Order of Summary Suspension, Application for Brief Adjudicative Proceeding (“BAP”), and Application for Adjudicative Proceeding on Carl D. Flores on May 7, 2010, by Special Agent Jenny Kapp. Mr. Flores filed his request for a BAP hearing on May 24, 2010.

The undersigned Administrative Law Judge conducted a stay hearing in this matter on June 2, 2010, at the Gambling Commission Office, 4565 7th Avenue SE, Lacey, Washington, and issued an Order Denying Request for Stay on June 15, 2010.

On June 30, 2010, the Commission issued a Notice of Hearing setting this matter for hearing on July 21, 2010, at 1:00 PM, at the Commission office located at 4565 7th Avenue SE, Lacey, Washington. Mr. Flores failed to appear at the July 21 hearing. The Commission wished to establish a prima facie case, and offered eleven (11) exhibits, which were admitted.

The Commission urges the revocation of Mr. Flores’s gambling license for these reasons:

1. Mr. Flores violated Section 5(d)(i) of the Tribal-State Compact for Class III Gaming (“Compact”), and RCW 9.46.075(1), by failing to comply with Ch. 9.46 RCW and Title 230 WAC;
2. Mr. Flores violated Section 5(d)(iv) of the Compact and RCW 9.46.075(4), because he pleaded guilty to larceny or other criminal offense involving moral turpitude or gambling activity;
3. Mr. Flores violated Section 5(d)(vi) of the Compact and RCW 9.46.153(1), because the licensee failed to prove, by clear and convincing evidence, that he is qualified to hold his certification;

4. Pursuant to Section 5(d)(viii) of the Compact, the Tribal Gaming Agency (TGA) revoked his tribal license during the preceding twelve months;
5. Mr. Flores violated Section 5(d)(x) of the Compact and RCW 9.46.075(10), because he pursued, for economic gain, in an occupational manner or context, a course of action that violates the criminal policies of the State of Washington, and there is probable cause to believe his conduct is inimical to the effective regulation of gambling;
6. Based on his conduct, Mr. Flores poses a threat to the effective regulation of gambling or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as provided in WAC 230-03-085(1) and (8);
7. Mr. Flores violated RCW 9.46.190(3) because, as a card room dealer, he stole gaming chips from his employer, which was an act, practice, or course of operation that was a fraud or deceit upon his employer and a gross misdemeanor;
8. Mr. Flores was convicted of a criminal offense and is serving a period of probation or community supervision, and WAC 230-03-085(5) authorizes the revocation of his license for that reason.

The Administrative Law Judge, having considered the evidence, now enters the following Findings of Fact:

FINDINGS OF FACT

1. Mr. Flores is an enrolled member of the Nooksack Indian Tribe. His enrollment number is 1177.

2. The State Gaming Agency (SGA) issued a Class III certification to Mr. Flores. A Class III certification is issued to employees working at Tribal casinos. The certification authorizes similar activities as the Card Room Employee (CRE) license issued to individuals working at commercial house-banked card rooms. Holders of a Class III Certification may apply to have the certification transferred to a CRE license. Mr. Flores's Class III certification bears the number 69-12192, and, without more, expires on December 13, 2010.

3. Mr. Flores was an employee of the Nooksack River Casino ("the Casino") in early March 2010. He worked as a table games dealer.

4. On March 4, 2010, one of the Casino's security officers, Tess Jonasson, observed Mr. Flores leave the Casino on his break, cross the street to a location known as the Market Centre, and enter the restroom. One minute later, Ms. Jonasson observed Mr. Flores leave the restroom, cross the street, and enter a restroom inside the Casino. Mr. Flores's actions aroused Ms. Jonasson's suspicions. She contacted the Nooksack Tribal Gaming Authority ("TGA").

5. The TGA instructed the Casino's surveillance staff to observe Mr. Flores's actions for a while. Over a three-day period, the surveillance staff used closed circuit television to observe and record Mr. Flores's actions on the Casino floor. In short, the Casino's surveillance staff recorded Mr. Flores as he took \$425 in \$25 gaming chips and placed them in his pants pockets.

6. The Casino's management met and reviewed the surveillance tapes and decided to call the Nooksack Tribal Police.

7. On March 12, 2010, the TGA manager interviewed Mr. Flores about the thefts. Mr. Flores confessed to stealing \$4,000 from the Casino over a four or five month period. Mr.

Flores had an arrangement to leave \$100 in chips in the Market Centre restroom in a secret

location. He would then leave, but return later to pick up one tab of Oxycontin. Mr. Flores took possession of the Oxycontin and later either ingested it or smoked it.

8. As a result of the investigation into Mr. Flores's activities, and his confession to stealing \$4,000 from the Casino, the Nooksack Tribal Police arrested Mr. Flores on March 12, 2010. The Nooksack Tribe prosecuted Mr. Flores on theft and possession of controlled substance charges. On April 21, 2010, Mr. Flores pleaded guilty to Theft I under Nooksack Code sec. 20.05.250 and possession of a controlled substance under Nooksack Code sec. 20.06.050. The sentence imposed on Mr. Flores was 180 days in jail, suspended upon the condition of successful completion of one year's probation, finding work, outpatient treatment for his drug addiction, and restitution of the \$4,000 to the Casino, and no new violations of any law in any jurisdiction.

9. On March 9, 2010, the Nooksack Gaming Commission revoked Mr. Flores's tribally issued gambling license based upon his theft of the gaming chips. Mr. Flores did not appeal the revocation.

10. On March 12, 2010, the Nooksack Gaming Commission permanently barred Mr. Flores from being present at or near the Nooksack River Casino, Nooksack's Northwood Casino, and the Nooksack Market Center / Gas Station. The Nooksack Gaming Commission barred Mr. Flores as a result of his theft from the Nooksack River Casino while working there as an employee.

11. The Commission was notified of the actions taken by the Nooksack Gaming Commission and the criminal proceedings against Mr. Flores. The Commission issued Findings of Fact, Conclusions of Law and Order of Summary Suspension of License, summarily suspending Mr. Flores's on April 29, 2010.

12. The Gambling Commission served the cover letter, Findings of Fact, Conclusions of Law, Order of Summary Suspension, Application for Brief Adjudicative Proceeding (“BAP”), and Application for Adjudicative Proceeding on Carl D. Flores on May 7, 2010, by Special Agent Jenny Kapp. Mr. Flores filed his request for a BAP hearing on May 24, 2010.

13. The undersigned Administrative Law Judge conducted a stay hearing in this matter on June 2, 2010, at the Gambling Commission Office, 4565 7th Avenue SE, Lacey, Washington, and issued an Order Denying Request for Stay on June 15, 2010.

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CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the persons and subject matter of this case pursuant to the Tribal-State Compact for Class III Gaming of 1991, RCW 9.46.140, Chapter 34.05 RCW, and Title 230 WAC.

2. The State of Washington and the Nooksack Indian Tribe are parties to the Tribal-State Compact for Class III Gaming (“Compact”), signed by representatives of both parties on October 28, 1991. The Washington State Gambling Commission is the “State Gaming Commission” (“SGA”) identified in the Compact, section 2(q). The Nooksack Tribal Gaming Commission is the “Tribal Gaming Agency” (“TGA”) identified in the Compact, section 2(r). Section 2(b) of the Compact defines “state certification” to mean “the licensing process utilized by the State Gaming Agency to ensure all persons required to be licensed/certified are qualified to hold such license in accordance with the provisions of Chapter 9.46 RCW.” Section 5 of the Compact authorizes the SGA to investigate applicants for “state certification,” and, in Section

5(d), provides for other state enforcement action, including summary suspension of state certification.

3. The Compact, section 5(m), provides, “The Tribal Gaming Agency, pursuant to the laws of the Tribe, and the State Gaming Agency, pursuant to the laws of the State, may summarily suspend any respective Tribal license or State certification if the continued licensing or certification of a person or party constitutes an immediate threat to the public health, safety, or welfare.”

4. The Compact, section 5(n), provides, “Any applicant for State certification agrees by submitting such application to submit to State jurisdiction to the extent necessary to determine qualification to hold such certification, including all necessary administrative procedures, hearings and appeals pursuant to RCW 9.46, WAC 230-50 [amended and recodified today as WAC 230-17; see, WSR 07-21-156] and the State Administrative Procedures [sic] Act, RCW 34.05. As a condition of employment in Class III activities, the Tribe shall require Tribal members who apply for certification specifically, waive any immunity, defense, or other objection they might otherwise have to the exercise of state jurisdiction for those purposes discussed in this paragraph. Nothing in this Section shall be deemed or interpreted as a waiver or immunity or submission to State jurisdiction for any other purpose or cause of action.”

5. The Compact, section 5(d), provides, “The State Gaming Agency may revoke, suspend or deny a State certification for any reason or reasons it deems to be in the public interest. These reasons shall include, but not be limited to, when an applicant or holder of certification:

(i) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or

any rules adopted by the State Gaming Agency pursuant thereto, or any provisions of a Tribal/State Compact, or when a violation of any provision of chapter 9.46 RCW, or any State Gaming Agency rule, or any provision of a Tribal/State Compact has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

(iv) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to any Tribal, State, or U.S. governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of the Tribe, any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude; provided however, crimes, other than gambling, of a Tribal member relating to the exercise or defense of Tribal treaty rights shall not be grounds for revocation, suspension or denial;

(vi) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this Section;

(viii) Has had a Tribal license revoked or denied during the preceding twelve months.

(x) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal laws of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;

6. RCW 9.46.075(1) is substantially the same as Section 5(d)(i) of the Compact. RCW 9.46.075(4) is substantially the same as Section 5(d)(iv) of the Compact. RCW 9.46.075(8) is substantially the same as Section 5(d)(vi) of the Compact. RCW 9.46.075(10) is substantially the same as Section 5(d)(x) of the Compact.

7. During the time covered by the evidence in this case, Mr. Flores, has been the holder of a Class III certification to act as a public card room employee and is subject to the provisions of RCW 9.46.075 and WAC 230-03-085.

8. The Commission has the broad purpose of protecting the public by insuring that those activities authorized by Ch. 9.46 RCW do not maliciously affect the public and do not breach the peace. RCW 9.46.010.

9. The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control. The Commission is required to closely control all factors incident to the activities authorized in Ch. 9.46 RCW, and the provisions of Ch. 9.46 RCW are to be liberally construed to achieve those ends. RCW 9.46.010.

10. Mr. Flores stole poker chips from his employer to support his Oxycontin habit. The Commission has proved by a preponderance of the evidence that Mr. Flores violated both RCW 9.46.075(1) and Section 5(d)(i) of the Compact.

11. As a consequence of his theft and drug use, Mr. Flores pleaded guilty in Nooksack Tribal Court to one count each of Theft I and Possession of a Controlled Substance. The Nooksack Tribal Court sentenced Mr. Flores to serve a jail sentence, suspended on condition of successful completion of a one year probation, restitution, obtaining and maintaining a job,

and no new violations of the law in any jurisdiction. The Commission has proved by a preponderance of the evidence that Mr. Flores violated both RCW 9.46.075(4) and Section 5(d)(iv) of the Compact.

12. Each licensee has an affirmative responsibility to establish, by clear and convincing evidence, his continuing qualifications for licensure. RCW 9.46.153(1) and Section 5(d)(vi). Each holder of a license issued pursuant to chapter 9.46 RCW is subject to continuous scrutiny regarding his general character, integrity and ability to engage in or participate in, or associate with, gambling or related activities impacting this state. RCW 9.46.153(7). Mr. Flores failed to present any evidence because he failed to appear at the July 21, 2010, hearing.

13. On March 9, 2010, the Nooksack Gaming Commission revoked Mr. Flores's tribally issued gambling license. The Commission has proved by a preponderance of the evidence that Mr. Flores violated Section 5(d)(viii) of the Compact.

14. Oxycontin is another name for oxycodone, a controlled substance listed in Schedule II (RCW 69.50.026) of the Washington State Uniform Controlled Substances Act and is also listed as a controlled substance in the Nooksack Code of Laws.

15. The evidence shows that Mr. Flores stole approximately \$4,000 in poker chips from his employer in order to support his Oxycontin habit. The thefts occurred over a period of time. The Commission has proved by a preponderance of the evidence that Mr. Flores violated both RCW 9.46.075(10) and Section 5(d)(x) of the Compact.

16. Mr. Flores stole poker chips from his employer while in the course of his employment as a card room dealer at the Nooksack River Casino. The value of the stolen chips is approximately \$4,000. The Commission has proved by a preponderance of the evidence that Mr. Flores violated WAC 230-03-085(1) and (8), which provide:

Initial Order of Dismissal
Based on Default – Page 10

We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or

...

(8) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

- (a) Prior activities; or
- (b) Criminal record; or
- (c) Reputation; or
- (d) Habits; or
- (e) Associations[.]

17. Mr. Flores's theft of his employer's poker chips worked as a fraud or deceit upon his employer. The theft of \$4,000 worth of poker chips qualifies as theft in the second degree pursuant to RCW 9A.56.040 and Theft I pursuant to section 20.05.250 of the Nooksack Code of Laws. The Commission has proved by a preponderance of the evidence that Mr. Flores violated both RCW 9.46.190(3) ("an act, practice, or course of operation that was a fraud or deceit upon his employer") and Section 20.05.250 of the Nooksack Code of Laws.

18. As a consequence of his plea of guilty in Nooksack Tribal Court to the charges of theft and possession of a controlled substance, the Court sentenced Mr. Flores to jail time and a monetary fine, which were suspended for a twelve month period of probation. The Commission has proved by a preponderance of the evidence that Mr. Flores gambling license may be revoked pursuant to both WAC 230-03-085(5), which provides that the Commission may revoke a gambling license when the licensee is serving a period of probation or community supervision imposed as a sentence for any misdemeanor or felony criminal offense and Section 5(d)(viii) of the Compact, which provides that the SGA may revoke a certification when the holder of a

certification has had his Tribal license revoked during the preceding twelve months. The Tribal license revocation occurred during the twelve month period prior to the date of this Initial Order.

19. To closely control all factors incident to the activities authorized in chapter 9.46 RCW, the provisions of the chapter shall be liberally construed to achieve such ends. RCW 9.46.010. The general public can find itself in a particularly vulnerable position should a person licensed to conduct gambling activities fail to discharge his occupation with a sense of justice and honesty.

20. The Commission has proved by a preponderance of the evidence that it may revoke Mr. Flores's Class III Certification under the Compact, section 5(i), (iv), (vi), (viii), and (x), and under RCW 9.46.075(1), (4), (8), (10), RCW 9.46.153(1), RCW 9.46.190(3), and WAC 230-03-085(1), (5), and (8). I conclude that Mr. Flores's certification should be revoked based upon the foregoing Conclusions of Law, and that revocation is in the public interest.

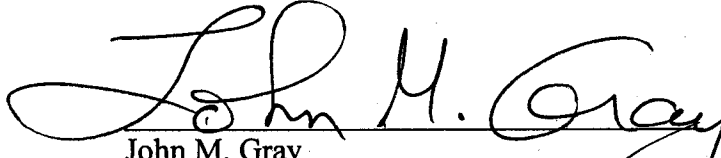
From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED That the card room employee license of Carl D. Flores be, and the same is, REVOKED.

Alternatively, the Licensee, Carl D. Flores, is in DEFAULT. A request that this order be vacated must be filed within seven days of service of this order, stating the grounds relied upon. RCW 34.05.440(3).

DATED at Olympia, Washington, this 29th day of July, 2010.

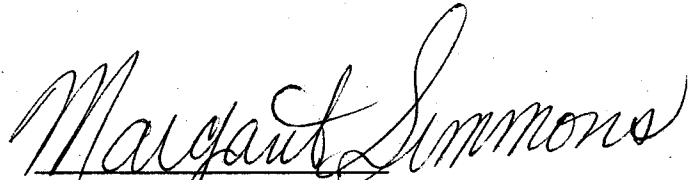

John M. Gray
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES

Initial orders must be entered in accordance with RCW 34.05.461(3). WAC 230-17-085(1). Section 5(e) and (n) of the Compact may also apply. An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-090. WAC 230-17-085(2). RCW 34.05.464 governs the review of initial orders. WAC 230-17-090(1). Any party to an adjudicative proceeding may file a petition for review of an initial order. Parties must file the petition for review with us within twenty days of the date of service of the initial order unless otherwise stated. Parties must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed. WAC 230-17-090(2). Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition. WAC 230-17-090(3). Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with us within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed. WAC 230-17-090(4). Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us. WAC 230-17-090(5). Copies of the petition or the cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed. WAC 230-17-090(6). After we receive the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order. WAC 230-17-090(7).

Certification of Mailing

I certify that I mailed true and correct copies of the **Initial Order of Dismissal Based on Default** to the following parties, postage prepaid this 29th day of July 2010 at Olympia, Washington.


Margaret Simmons
Legal Secretary

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